

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.81 of 1997

Reserved on:31.08.2006.

Decided on:September 12, 2006

Yoginder Pal Kapoor & Anr.

.....Appellants.

VERSUS

Land Acquisition Collector, Mandi.

.....Respondent.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?¹No

For the Appellants:

Mr.B.K.Malhotra, Advocate.

For the Respondent:

**Mr.M.S.Chandel, Advocate General,
with Mr.J.S.Guleria, Law Officer, for
the respondent.**

Deepak Gupta, Judge.

The property of Smt.Mastu Devi, the predecessor in interest of appellants, was illegally occupied by the Forest Department of the State on 1.1.1970. A Civil Suit was filed by Smt.Mastu against the Forest Department which was decreed in her favour on 1.10.1988 and decree for possession of the property was passed. Thereafter the State issued notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') on 15.5.1990 seeking to acquire 36.72 square metres of land. Mastu Devi objected to the acquisition and had filed a writ petition in this Court but the same was rejected. Finally the Land Acquisition Collector awarded Rs.15,000/- in lump

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes.***

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sum for the acquired land. No interest was awarded. Mastu Devi filed a reference petition under Section 18 of the Act and claimed that the value of the land was Rs.2500/- per square metre. She also claimed that there was a shop on the land existing at the time the property was taken over by the State. The learned District Judge vide the impugned order has held that Smt.Mastu Devi had not made out a case for enhancement of the compensation. He, however, held that the claimant in addition to the amount of Rs.15,000/- was entitled to the following amounts as additional compensation with interest:-

- i) “Amount calculated at the rate of 12% per annum on the market value of the land so assessed by the Land Acquisition Collector from the date of taking possession of the land i.e. 1.1.1970 to the date of award i.e. 27.2.1991.
- ii) Solatium at the rate of 30%.
- iii) Since the possession was taken on 1.1.1970, therefore, the petitioner was deprived of its benefits which she could draw therefrom and to compensate her thereby the interest at the rate of 9% per annum for the first year i.e. 1.1.1970 (date of taking of possession) to 31.12.1970 and thereafter at the rate of 15% till the date of payment by the Land Acquisition Collector, is also hereby awarded.”

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2. Aggrieved against this award the appellants have filed the present appeal. It is contended on behalf of the appellants that the learned Court below has not taken into consideration the evidence led by the claimant which proved that the value of the acquired land on 15.5.1990 the date of notification under Section of the Act was more than Rs.2500/- per square metre.

3. On the other hand, it is contended on behalf of the State that the value arrived at by the Land Acquisition Collector and upheld by the learned District Judge is the just and proper market value. It is also contended that the learned District Judge has gravely erred in awarding interest from the date of possession and that the interest could not have been granted prior to the date of notification under Section 4 of the Act.

4. A perusal of the evidence led before the learned Court below will show that Mastu Devi in her statement had stated that there was a shop on the disputed land in which a Barber used to work and thereafter the shop was vacated by him and remained vacant. A suggestion has been put to her in cross examination that the shop had fallen down and was in ruins. She denied this suggestion but stated that the shop was in a bad state.

5. PW-2 Sarvjit Singh has stated that he owns a shop in Bhootnath Bazar Mandi. He states that his father was tenant in the said shop and the shop was owned by one Shri Devi Chand. Devi Chand had filed a petition for eviction which was dismissed and they had purchased the share of Devi Chand in the shop for Rs.10,000/-

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and he has proved the sale deed copy of which is Ext.PW-2/A. He states that when the shop was purchased the same was in ruins and he has re-built the shop. He further states that the disputed property is in the middle of the Bazar and barely at a distance of 100 metres from his shop.

6. PW-3 Jai Kumar has stated that he owns a shop in Mahajan Bazar which was older than his age (65 years). This was rented out to Karam Singh father of Hemant Kumar and Suresh Kumar. The land owners had filed the petition for eviction against the tenants which was decided against the landlords and then they sold their shop under compulsion for a sum of Rs.50,000/- vide sale deed Ext.PW-3/A. He states that he had seen the property of Mastu Devi and there was a shop there which was at a short distance from his shop. According to him, the shop of Mastu Devi is in the main Bazar whereas his shop is in the alley.

7. PW-4 is Hemant Kumar who has supported the statement of PW-3. PW-5 is Devi Chand who sold the property to PW-2. His version is similar to that of PW-2. The respondents have only examined one Prem Singh Patwari and his statement is not material. From the documents proved on record, it is apparent that vide Ext.PW-2/A $1/6^{\text{th}}$ share in 28-35 square metres was sold for Rs.10,000/- that means 4.725 square metres of land along with structure standing thereupon was sold for Rs.10,000/- which works out to Rs.2116/- per square metre. As per the sale deed Ext.PW-3/A, 35-54 square metres

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of land along with structure standing thereupon was sold for Rs.50,000/-. The rate works out to Rs.1407/- per square metre.

8. The learned Court below has rejected the two sale deeds produced by the appellant solely on the ground that there was structure standing on the lands sold by these sale deeds. There is sufficient material on record to show that the structures standing were dilapidated structures which were in ruins. This has been stated by all the witnesses. In fact, the purchaser has stated that they have re-constructed the shops. There is evidence of Mastu Devi and the other witnesses that when her property was taken over by the State in the year 1970 there was a shop standing thereupon. Apparently this shop was broken by the Forest Department which constructed its own depot thereupon. Along with the appeal the appellant has also filed an application under Order 41 Rule 27 C.P.C. being CMP No.83 of 1997 for leading additional evidence. Along with this a copy of ***Khewat Abadi*** has been filed which shows that a two storeyed slate roofed shop was existing on the land in question. This is a public document and therefore the application is allowed and the same is taken on record.

9. Keeping in view all the factors, it is apparent that the property of the appellants was of the same condition as those reflected in the sale deeds and in fact might have been in a slightly better location. Keeping all these factors into view, I feel that the claimant is entitled to compensation at the rate of Rs.1800/- per square metre.

10. Next comes the question with regard to the payment of solatium and interest. The Apex Court in ***R.L.Jain (D) by LRs vs. DDA and others {(2004) 4 SCC 79}***, has clearly held that where possession is taken earlier and the notification under Section 4 of the Act is issued subsequently the additional sum of compensation at the rate of 12% per annum would be payable only from the date of notification and not from the period anterior to the publication of the notification. The Court also held that the interest under Section 28 and 34 of the Act is payable only from the date of notification and not from the date of possession. In Para-18, the Court observed as follows:-

“18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course

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of action. For delayed payment of such amount appropriate interest at prevailing bank rate maybe awarded.”

11. Therefore, all that an claimant may get in terms of the decision of the Apex Court is rent or damages for use of the property which the Collector is required to determine. This view has been re-affirmed in ***Land Acquisition Officer & Asstt. Commissioner & Anr. Vs. Hemanagouda & Ors. {(2005) 12 SCC 443}***, wherein the Apex Court set aside the judgment of the High Court and held that no interest on the awarded amount was payable under Section 34 of the Act in respect of possession taken prior to notification under Section 4(1) and remanded the case back to the Land Acquisition Authority with liberty to the claimants to raise a claim for rent / damages for use of the property as claimed prior to the date of acquisition.

12. In view of this position regardless of the fact that the State has not filed any appeal, I am of the view that the claimant can only be awarded interest strictly in accordance with the provisions of the Act. Therefore, it is held that in addition to the compensation payable to the claimant at the rate of Rs.1800/- per square metre for the land acquired, the claimant shall be entitled to solatium at 30% of the amount so found due and payable. Since the possession was taken prior to the date of issuing notification under Section 4 of the Act, the claimant is not entitled to any amount under Section 23(1-A). Since the Collector did not award any interest the claimant shall also be entitled to interest on the entire amount of compensation at the rate

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of 9% per annum from the date of notification i.e. 15.5.1990 for a period of one year and thereafter at the rate of 15% per annum till the entire amount is paid / deposited.

13. Keeping in view the directions of the Apex Court in ***Land Acquisition Officer's case (supra)***, in the present case also I direct that the matter may be sent back to the Land Acquisition Collector concerned before whom the present parties will be at liberty to raise a claim for rent or damages for use of the property for the period prior to the date of acquisition and the collector shall determine the dispute after notice to the State Government in accordance with law and the guidelines laid down by the Apex Court.

September 12, 2006_(soni)

(Deepak Gupta)
Judge.